

IN SENATE OF THE UNITED STATES.

MAY 29, 1848.

Submitted, and ordered to be printed.

Mr. YULEE made the following

REPORT:

The Committee on Naval Affairs, to whom was referred the petition of John Baldwin, report:

It appears that on the 15th of August, 1845, the petitioner entered into contract with the Navy Department of the United States for the delivery of 5,700 barrels of navy pork; and that, having failed in his compliance with the contract, a suit has been instituted for the recovery of his due share of the damage suffered by the United States, in consequence of such failure. The Navy Department appears to have acted with great liberality and consideration towards the contractor, and to have applied very just principles in its action upon all the applications for favor, which he made from time to time. The committee cannot perceive any just ground for the relief which the petitioner seeks. On the contrary, it is evident that the amount for which the contractor has become liable, is much less than it was in the power of the department to have made it, if a harsh, though legal, use all the rights allowed by the contract had been resorted to. The committee approves the moderation of the department, and asks to be discharged from the further consideration of the memorial.

The communications of the Secretary of the Navy, and Chief of the Bureau of Provisions and Clothing, hereto appended, fully explain all the material facts connected with the history and present state of the transaction.

NAVY DEPARTMENT, May 5, 1848.

SIR: I have the honor to acknowledge the receipt of your communication of the 24th April, with the memorial of Dr. John Baldwin and the accompanying papers. You ask that I will give to the Committee on Naval Affairs such information and opinion upon the subject matter of the memorial as may be in the power of the de-

partment to furnish, and that I will "state the mode and form of relief, in case the committee should finally agree to grant it."

I have the honor to transmit a copy of the report of the Chief of the Bureau of Provisions and Clothing, to which your letter was referred, as containing the information which can be furnished on the subject.

Dr. Baldwin's contracts were not to furnish the articles stipulated for on requisition as wanted, but to deliver at specified places, at certain dates, the prescribed quantities of beef and pork. With this stipulation he did not comply. If the department had gone into open market and purchased the deficiency within any short time after his failure to deliver, the loss would not have been considerable; but this the department did not do, and charge the contractor with the excess of price, as the provisions were not required for immediate use. The sudden and extraordinary rise in provisions induced me to postpone purchasing as long as the wants of the service would warrant. Purchases were made sparingly, because I consider it a wise policy to extend to contractors every indulgence compatible with the great end of securing adequate supplies of the articles contracted for. But, as long as the law requires proposals to be advertised for and the contracts to be given to the lowest bidders, there does not appear to me to be any good reason why a defaulting contractor should not make good to the treasury the loss sustained in a purchase which his contract, if executed, would render unnecessary.

But there may be extraordinary and unforeseen contingencies which may increase prices beyond the anticipations of the most sagacious men of business, and then the contractor may appeal to an equitable disposition of Congress to mitigate the severity of the loss to him. Perhaps the sudden rise in the provision market in the United States, in the last year, presents such a case. I incline to think that it does. A liberal policy, in such conjunctures, will secure contracts on the most reasonable terms.

I do not perceive any ground on which Dr. Baldwin is entitled to claim damages from the United States for any act of the government agents in regard to his broken contract.

The reservation of ten per cent. on the deliveries is in the treasury, and, unless released, will go to the credit of the contractor against the excess of price paid by the government. A suit has been ordered against Dr. Baldwin for a portion of the deficiency, ascertained by distributing the actual loss between him and other defaulting contractors. If it shall be the pleasure of Congress to relieve him against the loss thus charged to him, in whole or in part, the direction by law to close the contract, on his paying a portion of such charge, or without requiring him to pay anything, and that his ten per cent. reserved be paid to him, will accomplish the object suggested in your note.

The memorial and accompanying papers are herewith returned.

I have the honor to be, very respectfully, your obedient servant,

J. Y. MASON.

HON. J. W. MILLER,

Of the Com. on Naval Affairs, U. S. Senate.

BUREAU OF PROVISION AND CLOTHING,
April 28, 1848.

SIR: The following statement of the material facts in the case of Mr. John Baldwin, one of the delinquent contractors, against whom suits have been, or are about being instituted, are respectfully submitted.

In August, 1845, Mr. Baldwin entered into three several contracts for the delivery of 1,900 barrels of pork at each of the navy yards at Charlestown, Brooklyn, and Gosport; one half the quantity on each contract was to be delivered on or before the 1st of April, 1846, the remainder by the 15th of June following. At the expiration of the time limited, he had complied with the condition of neither contract. By the terms stipulated, the bureau was authorized to make purchases to supply deficiencies, and any excess of cost over the price specified was to be paid by the contractor. It has not, however, been the practice of the bureau to enforce a rigid fulfilment of the contract at the time designated, if there are reasons for delay, and the wants of the service will permit this indulgence. In this instance, Mr. Baldwin requested that immediate purchases should not be made, stated that he intended to fulfil his contracts, but that he had experienced difficulties and been subjected to extra expense, which called for forbearance; and, as the supply on hand was sufficient for the then existing wants of the service, the bureau omitted to purchase until compelled by necessity to do so. The delay was at the risk of the contractor, who was aware that purchases might at any time be made in the open market at his expense. I know of no other extension of time, than this omission to purchase until the article was wanted, nor am I aware of any understanding by which Mr. Baldwin was to be "notified if the service required further supplies." No such notice was given him, though he continued to make deliveries in small parcels until November, 1846.

In the month of October, Mr. Baldwin completed the delivery of 1,900 barrels at Gosport, and was paid there for the full amount, including the ten per cent. reservation, which he asked as a favor, in order to facilitate the completion of his other contracts.

At the Brooklyn yard he delivered, in the course of the summer and fall, 788 barrels, leaving a deficiency of 1,112 barrels on this contract.

No deliveries were made by Mr. Baldwin at the Charlestown yard; but, on his repeated and very urgent request, stating that his pork was at New Orleans, and that freight had advanced after the commencement of hostilities with Mexico, the bureau consented to receive 1,000 barrels on that contract at Pensacola. The reception of this quantity left a deficiency of 900 barrels on the Charlestown contract, making a total deficiency on these two contracts of 2,012 barrels.

In the fall of 1846, the bureau contracted with Myers and McKibbin, for 2,400 barrels of pork, and with Lorenzo Cadwell, for 1,600 barrels, to be delivered in the months of April and June

following. No deliveries were made by either of these contractors, and there being a deficiency, the bureau, after delaying as long as it could with justice to the service, proceeded to purchase in the month of August, 1847, 1,200 barrels, which was increased by subsequent purchases to 2,700. Of these several purchases thus made, 1,900 barrels were for the Brooklyn yard, and 400 barrels were for each of the yards at Charlestown and Gosport. With a view to equity and justice among the parties interested, the department directed that the excess of cost, over and above the contract prices, should be apportioned among the delinquent contractors, according to the quantities due from each at the respective yards. As Mr. Baldwin had completed his contract at Gosport, the purchases for that yard need not be further adverted to; but the following is an exhibit of the delinquency, purchases, and apportionment, at Brooklyn and Charlestown, where he has failed to complete his deliveries. Deficient at Brooklyn, John Baldwin, 1,112 barrels; Myers and McKibbin, 800; Lorenzo Cadwell, 800.

Total deficiency at Brooklyn, 2,712 bbls. The total amount of purchases for that yard, in consequence of their deficiencies, was 1,900 lbs. These purchases were apportioned to J. Baldwin, 780 bbls., on which there was an excess of cost, \$3,179 28; Myers & McKibbin, 560 bbls., \$3,166 58; L. Cadwell, 560 bbls., \$3,558 58.

The delinquent contractors at Charlestown were John Baldwin, 900 bbls.; Lo. Caldwell, 800 bbls. Total deficiency at Charlestown, 1,700 bbls. The total purchases at that yard were 400 bbls., which were apportioned to J. Baldwin, 212 bbls., on which the excess of cost was \$568 16; to L. Cadwell, 188 bbls., \$759 92. The total delinquency of Mr. Baldwin is 2,012 bbls., and there has been purchased on his account 992 bbls., on which he has been charged the excess of cost, over his contract prices, for \$3,747 44. The ten per cent. reservation on the 788 bbls., which he has delivered at Brooklyn, amount to \$896 74; the reservation on the 1,000 bbls. delivered and received at Pensacola, under his Charlestown contract, is \$1,131 50; making the total reservation \$2,028 24, and leaving an actual balance due from Mr. Baldwin of \$1,719 20.

It is claimed by Mr. Baldwin that had the contractors, subsequent to himself, fulfilled their contracts, purchases would have been unnecessary. On the other hand, had Mr. Baldwin completed his deliveries, the necessity of resorting to the open market would have been almost entirely superseded. The department, with a view of relieving the several contractors, during the continuance of the very high prices that ruled through the year 1847, limited its purchases to the smallest quantity that it could, with a prudent regard for the service.

Mr. Baldwin states in his memorial that "he supplied all the requirements of the navy, from the 1st day of April, 1846, to the 1st day of April, 1847." These were not the conditions of Mr. Baldwin's contracts; and had the case been reversed, had the market price been five dollars per bbl. less than the contract price, instead of five dollars more, he would doubtless have regarded the terms of the contracts, rather than the requirements of the service. Although Mr. B. speaks of having supplied all the requirements from

the 1st of April, 1846, he made no deliveries under either his Brooklyn or Charlestown contracts until June. In connection with this claim of supplying the requirements of the navy, he states the quantities on hand on the 1st of April, 1846 and 1847; but the important facts are omitted, that in April, 1846, the authorised force was 7,500 men, and the pork contracts were for 5,700 bbls.; while in April, 1847, the authorised force was increased to 10,000 men, and there were contracts made for only 4,000 bbls. of pork. So that the department was to meet an increased demand with a reduced supply. If there were the same quantities on hand in April, 1847, as in April, 1846, there were 2,500 men more to consume them, and the incoming contracts were for 1,700 bbls. less. But the exigencies of the service are confined to the department, and do not devolve on the contractors, whose course, in this instance, was a plain one.

As regards alleged difficulties in the inspection at Pensacola, it would be sufficient, perhaps, to say, that Mr. Baldwin himself selected that yard and inspection for his delivery instead of Charlestown; but in addition to this indulgence, granted on his repeated application, it should be stated that, after the first inspection at that yard, he solicited and the bureau authorised a second inspection. The contract itself provides that the contractor shall be at all the expense of inspection, re-coopering, &c.; and if there are not the conveniences at Pensacola that there are at Charlestown, it is not perceived wherein the government is responsible.

It is well known that the price of pork and provisions generally advanced in the fall of 1846, and the winter and spring of 1847. This advance was caused, it is apprehended, less by the war than the famine in Europe. Mr. Baldwin's contracts for pork were at prices varying from \$11 25 to \$11 50 per bbl. In September, 1846, four months after the war commenced, the bureau contracted for 4,000 bbls. of pork, to be delivered in April and June following, at rates varying from \$9 20 to \$9 90 per bbl., and the market price at that period did not exceed these rates. In the winter and spring following, prices advanced to \$16 and \$17 per bbl. When this advance took place, Mr. Baldwin discontinued further deliveries, and the other contractors totally failed complying with their contracts. Whether this extraordinary and unanticipated change in the markets operates in mitigation of the defaulting contractors, may be worthy the attention of Congress; which should, however, have the whole facts in its possession. If Mr. Baldwin's appeal is to their generosity, the bureau would not be understood as interposing any obstacle to their liberality by this communication, which has been made in consequence of the statements of the memorial, and with a view to a right understanding of the whole subject.

The memorial of Mr. Baldwin and the accompanying papers are herewith returned.

Very respectfully,

GIDEON WELLES,
Chief of bureau.

Hon. JOHN Y. MASON,
Secretary of Navy.

IN SENATE OF THE UNITED STATES.

May 22, 1844

Read, and without debate.

Mr. Yeaser made the following

REPORT

The Committee on Naval Affairs, to whom was referred the petition of John Brown, &c.

The petitioner makes a claim for a large amount, to wit, \$10,000, for services and rights, for services rendered to the United States, and for engines. It appears that Mr. Brown was not employed in any service, but was "permitted, as a particular act of favor and kindness, to superintend the construction of the machinery of the Princeton," in the course of which he performed a deep talent. The fact stated in the subsequent letter from Captain A. S. Stickney to the Navy Department, denies the claim of the petitioner of all kinds of property. The Secretary of the Navy decided against the claim of Mr. Brown, and the Committee had no reasonable ground for interfering to disturb that decision.

Washington, May 22, 1844

Sir: In answer to your last communication of the 10th inst., on the subject of Captain Brown's services, a copy of which has been previously sent to me by the Department, and which I could not examine, I have the honor to inform you that

There is no ground for your petition, or other claims, upon all proper occasions, the services of Captain Brown's services, and skill in constructing and his well-intended efforts for the benefit of the country. And although I am well aware of the value of his services to the government, and am more than a proper reward for myself, to give my own, that I was quite surprised to learn that he had presented any claim, or demand, whatever, against the Department for services rendered to me in fitting the Princeton; nor was it

